



**International Convention
on the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-eighth session

SUMMARY RECORD OF THE 1146th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 8 March 1996, at 10 a.m.

Chairman: Mr. BANTON

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Thirteenth periodic report of Spain (continued)

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Thirteenth periodic report of Spain (CERD/C/263/Add.5) (continued)

1. At the invitation of the Chairman, the members of the Spanish delegation resumed their seats at the Committee table.

2. Mr. AHMADU said that the countries of sub-Saharan Africa, and in particular Nigeria, whose population accounted for one third of that region's population, seemed to be particularly discriminated against when it came to obtaining Spanish visas. He asked why the countries whose citizens no longer required a visa to visit Spain included only one country from sub-Saharan Africa. He also requested that the figures given in Spain's next report should distinguish between Moroccans and other Africans.

3. Mrs. VEVIA ROMERO (Spain) said that her delegation would reply to the various questions raised by the members of the Committee subject by subject. The desired statistics and information, which had only an indirect bearing on racial discrimination, would be sent to the Committee as soon as possible. The new provisions adopted by Spain in 1995 filled a number of gaps identified by the Committee. Where links between the State and the Autonomous Communities, and the transfer of responsibility were concerned, she would provide the Committee with detailed information as soon as she had received it from the competent ministries.

4. Regarding limitation of the powers of the Autonomous Communities, she emphasized that article 148 of the Constitution defined the responsibilities of each Autonomous Community, which could subsequently be expanded, albeit within the limits set by article 149: the same article conferred on the State exclusive competence for questions of nationality, immigration, emigration, aliens and the right of asylum. The competent ministries could invite the government agencies of the various Autonomous Communities to participate in sectoral conferences and to conclude cooperation agreements on the provision of various services in the fields of education and health.

5. Monitoring of the activities of the agencies of the Autonomous Communities would be the responsibility of the Constitutional Court where matters of conformity with the Constitution were concerned, of the administrative courts in cases of administrative disputes and of the Court of Audit where economic and budgetary matters were concerned.

6. Mr. PORRAS MUÑOZ (Spain), replying to the questions about the Gypsy community, pointed out that, with the aim of preserving the right to privacy, the Constitution did not allow official censuses to record racial or ethnic identity. In any case, what really mattered was not so much the number of Gypsies as their economic circumstances, which had been the subject of sufficient studies and analyses to enable the problems posed to be addressed.

The Gypsies themselves did not favour a census of their community. He informed Mr. Lechuga Hevia that there was no contradiction between article 14 of the Constitution, which proclaimed the equality of all before the law without distinction, and article 9 of the Constitution under which the authorities were responsible for eliminating any obstacles to the effective enjoyment of fundamental rights. Regarding the distribution of Gypsies throughout Spain, he said that in 1993, of the approximately 406,168 Gypsies in Spain, 38.67 per cent had been in Andalusia, 8.76 per cent in Madrid, 7.84 per cent in Catalonia, 7.86 per cent in Valencia and 4.97 per cent in the region of Castilla La Mancha. There seemed to be a tendency for Gypsies to settle around large towns.

7. Follow-up and evaluation of the Gypsy Development Plan, on which his delegation would provide the Committee with a number of documents, were indeed extremely important and were the responsibility of a special follow-up committee comprising representatives of the central administration, of the administrations of the Autonomous Communities and of the local administrations, as well as a number of specialists. There was also a parallel consultative committee comprising representatives of the Government and leaders of the most representative Gypsy associations. During the period 1989-1995 a total of 8.259 million pesetas had been allocated to the plan, thus making it possible to fund more than 1,130 programmes. Some results had already been achieved. For example, specific policies and measures had been adopted in support of the Gypsies by many public and private bodies. Employment opportunities for Gypsies had improved. Major progress had been made in school attendance, especially among young children, and truancy and dropping out were declining among the Gypsy population. Access by Gypsies to the public health system had improved and special measures had been adopted for Gypsy women. Substantial efforts had been made to enable Gypsies to obtain proper housing and to facilitate their integration into society. Despite certain difficulties, Gypsies were participating more in matters of direct concern to them and in running programmes intended for them. A positive image of Gypsies was gradually developing and knowledge of their values and culture was becoming more widespread.

8. Remedial teaching was intended for all children who were in need of it, both Gypsies and non-Gypsies alike. Although more and more pupils requested such teaching, the proportion of Gypsies was in fact declining. The Ministry of Education and Science would shortly issue a decree providing for measures to offset educational inequalities deriving from economic, social, cultural, ethnic or geographical factors. It must be clearly understood that affirmative action in support of Gypsies was justified solely by the *de facto* discrimination they suffered in certain areas.

9. The word "agitanado" and other terms based on the word "Gypsy" had not been deleted from the dictionary, and his delegation took note of the concern expressed on that point by the Country Rapporteur, which it shared. It would see what steps it could take to persuade the Royal Academy to delete those words from the dictionary or to provide a different interpretation of them. However, the essential problem derived not from the existence of such words but from the manner in which they were used. Efforts to solve the problem

were of two kinds: first, the avoidance of any pejorative reference to Gypsies. In November 1994 the Ministry of Social Affairs had signed with the Autonomous Communities an agreement designed to protect the image of ethnic minorities in the media, which were invited to conform to the principles set out in the agreement. It was still too early to assess the results. In addition, the Ministry of Social Affairs subsidized a number of programmes and projects relating to the Gypsy population, whose aim was to identify any racist allusions to Gypsies in school textbooks or, on the other hand, to familiarize people with their culture.

10. The second component of efforts to combat racial discrimination consisted of anti-racist campaigns. The campaign entitled "Democracy is equality" had had a great impact; the campaign entitled "Youth against intolerance" had received support from numerous Gypsy organizations; and the European Youth Campaign against racism, xenophobia, anti-Semitism and intolerance had been launched in conjunction with the Council of Europe. The Committee would receive any further information it requested on those campaigns.

11. The rehousing plan described in paragraphs 63 to 70 of the report had given rise to a degree of perfectly understandable concern. The Committee must appreciate that the brief interruption of its implementation in 1993 had provided an opportunity to take stock and to redefine the methods and aims of the Consortio de Población Marginada (Underprivileged Population Consortium), and that the new local and autonomous governments formed after the October 1995 elections had concluded with the Consortium, a new agreement which was currently in force. A total of 1,850 families had been rehoused and 760 were on waiting lists. Rehousing social groups that had their own way of life, which was sometimes incompatible with that of other groups, gave rise to difficulties; if in some cases it had been necessary to provide special housing, it was in order to respect those differences and not in a spirit of discrimination. The rehousing programme was accompanied by a social support programme to prevent any discrimination or rejection either by the "host" population or by the beneficiaries.

12. The elimination of shanty towns (chabolismo) also posed problems, on account of its legal aspects. All Spanish citizens were entitled to a roof over their head, even a temporary and illegal one. Preventing a citizen from living in a shack might be regarded as discrimination. Gypsies were certainly entitled to settle anywhere, and only a small minority of them still lived in shacks. He acknowledged that one shanty town was indeed hidden by a wall. That was because the owners of the private land on which the inhabitants of the shacks had settled had wanted to enclose their property. The shacks could only be demolished when the inhabitants could be rehoused, as required by law.

13. In reply to a question on police behaviour and training, he described the considerable progress that was apparent in both areas, especially with regard to the handling of cases involving aliens or Gypsies. None the less, in November 1995 police officers had received further instructions emphasizing the principles of objectivity, integration, and respect for rights and customs

within the provisions of the law. Where training itself was concerned, the State police college and the various training centres of the Civil Guard and the regional and local police forces taught their pupils how to deal with any form of discrimination and what they needed to know about existing minorities. The next report would contain fuller information on that topic.

14. Lastly, in reply to a question on illiteracy, he said that paragraph 13 of the report, which dealt with that subject, also contained information on school attendance. According to the 1990 figures, 2.5 per cent of the population were illiterate and 97.5 per cent could read and write properly.

15. Mr. APARICIO GOMEZ-LOBO (Spain) said he wished to dispel the doubt which had been expressed regarding the existence of a national policy to combat discrimination. There certainly was such a policy. All the parties represented in Parliament had programmes to combat discrimination and had defined the policies they intended to follow.

16. The Criminal Code had been partially amended in 1995. Justification of genocide henceforth constituted an offence and effective procedures had been laid down to prosecute the perpetrators of acts of racism, anti-Semitism and discrimination in general on grounds of race, sex, ideas, national origin or illness.

17. Where aliens were concerned, in 1991 Parliament had instructed the Executive to propose means of implementing a policy designed to reduce the causes of emigration, in particular through cooperation with the immigrants' countries of origin, control and rationalization of flows of immigrants and genuine integration of immigrants. The Government had adopted a plan for the social integration of immigrants to guarantee them a lawful and secure situation and prevent them from being exploited. New regulations for the implementation of Act No. 7/1985 had also laid the foundations for fuller integration of aliens, as the Government was convinced that the solution to problems of exclusion lay in integration. The status of permanent resident had been introduced, family reunion had been facilitated and a stable legal framework currently enabled immigrants to plan their lives. As part of that strategy, Spain had submitted to the European Union a programme of action to combat discrimination, which was shortly due to be adopted as a resolution.

18. Mrs. MARTINEZ CANO-CORTES (Spain), replying to the questions asked about the treatment of the Muslim population in Ceuta and Melilla, drew the attention of the Committee to the 1994 Aliens' Yearbook, a copy of which would be given to the secretariat and which contained some of the statistical information requested by members.

19. The number of Muslims whose historical roots lay in those two towns was approximately 14,000; the other Muslims had come from elsewhere. Her delegation wished to emphasize that the group in question was not only free from de facto discrimination, but on the contrary benefited from a special arrangement under which its members were entitled to more favourable treatment than the rest of the population. Since 1987 in the case of Melilla and 1989

in that of Ceuta, they had had an identity card which replaced the former registration card and enabled them to live in Spain without any particular requirements.

20. On 31 December 1994 there had been 408 other Muslims from North Africa in Ceuta and 654 in Melilla.

21. Mr. APARICIO GOMEZ-LOBO (Spain) described the situation of the sub-Saharan population living on the outskirts of the town of Ceuta. Part of that population, whose size varied, was in the no man's land between the Spanish and Moroccan borders; for that reason, it was beyond Spanish jurisdiction. The other part, which camped not far away on Spanish territory, was composed of persons originating from 15 or so countries in black Africa, who lived in extremely precarious conditions in an area known as "Muralla" and were gradually being transferred to the Spanish mainland. Under an emergency plan they had been able to solve their problems. Its main phases were the following: accommodation in a camp providing essential services, issue of the requisite documents, authorization to work thanks to those documents, transfer to the Spanish mainland, and finally, with the assistance of the Spanish Red Cross, assignment to centres located in various parts of Spain. In 1995 and 1996, 300 of those sub-Saharan Africans had benefited from those measures, together with a group from Melilla, whose members had been in possession of the requisite documents.

22. Mrs. MARTINEZ CANO-CORTES (Spain), replying to questions about Act No. 7/1985 relating to the rights and duties of aliens, said the delegation had been asked whether article 6 of the Act, which provided for the possibility of restrictions on freedom of movement, might not be discriminatory. She assured the Committee that that was not the case, as the restrictions in question were only required for security reasons; they applied in cases that were defined by law and were subject to procedures which the law also specified. In addition, as they concerned individuals and not groups, they were devoid of any racially discriminatory character. The provisions of the article had so far never been enforced.

23. She also reassured the Committee about the exercise by aliens of their right of association. It was indeed possible to disband an association, but only by a decision of the courts, and the Constitutional Court had clearly stated that aliens possessed the same right of association as Spanish citizens.

24. The Government's current position should be considered not on the basis of enactments that were already dated, but in the light of the new regulations implementing the Act, which were due to come into force in April 1996. Under the new regulations, Act No. 30 of 26 November 1992, relating to the juridical regime of the public authorities and administrative procedures would henceforth apply without distinction to aliens and Spanish citizens. In administrative matters, aliens would thus enjoy the same guarantees as Spaniards, except in respect of expulsion.

25. Unlike the former regulations implementing the Act, which had only contained three articles on the rights of aliens, the new regulations devoted a whole chapter to the question. As well as guaranteeing to all persons in

Spain, including those in an illegal situation, the inherent rights of the individual, such as the right to education and the right to be assisted, free of charge if necessary, by a lawyer and by an interpreter, it also extended the following rights to aliens lawfully resident in Spain: right to liberty of movement and freedom to choose one's residence; right to freedom of assembly and association; right to vote and to be elected in municipal elections (subject to reciprocity); right to hold public office that did not involve the exercise of authority; right to join trade unions and right to strike; right to education, right to set up and manage educational establishments and enterprises; right to medical care, social security and social services.

26. The regulations granted to aliens who were minors, including those in an illegal situation, the protection and guarantees provided for by the Convention on the Rights of the Child. They could not be held in internment centres for aliens unless their parents were already there and wished them to join them and the material conditions enabled family unity and privacy to be preserved. In addition, they could not be expelled. The authorities also took measures to mitigate the effects of being uprooted from their culture on children from areas of conflict.

27. The new regulations incorporated the provisions of the Schengen Agreement in respect of visas. In addition, certain requirements for entry into Spain had been relaxed. In order to be authorized to stay or reside in Spain aliens were no longer required to prove they possessed the necessary funds to meet their needs, provided they were able legally to obtain such funds once they were in Spain.

28. The new regulations also relaxed and simplified administrative procedure in respect of family reunion. They allowed a residence permit to be issued to aliens who had been living in Spain for five or six years, or even less in certain cases (e.g. refugees and stateless persons), and to be issued on humanitarian grounds (e.g. to persons from areas of conflict or to victims of racist persecution). In addition, an alien in an illegal situation who was already integrated into Spanish society could only be expelled for extremely serious reasons and the regulations of internment centres for such aliens would be amended.

29. Mr. APARICIO GOMEZ-LOBO (Spain) said that the number of racist or xenophobic acts recorded by certain NGOs was generally higher than the number provided by the General Commissariat for Aliens and Documentation because the latter only took account of acts whose perpetrators had actually been convicted by the courts under current legislation. Thus, in 1994, there had been 51 convictions for racist acts.

30. Mrs. MARTINEZ CANO-CORTES (Spain) said that Act 5/1984, on the right of asylum and refugee status, as amended by Act No. 9/1994, was not only in conformity with the provisions of the Convention relating to the Status of Refugees but went even further since it extended to refugees the right to work in Spain. Act No. 9/94 and the new regulations for its implementation (Royal Decree No. 203/1995) were actually intended to prevent fraudulent use of the system of refugee protection for purposes of economic immigration. The new legislation was in conformity with the provisions of the instruments ratified

by Spain, and in particular the Dublin Convention and the Schengen Agreement. The reason why only 345 of the 11,045 persons who had submitted an application for asylum in 1994 had been granted asylum was that most of the applications had actually been made for economic reasons. Her delegation had provided the secretariat with very detailed statistics on asylum-seekers, and in particular their nationality.

31. An alien could fill out an application for asylum at a border post, if necessary with the assistance of a lawyer and an interpreter. The competent authorities were required to rule on the admissibility of the application within 72 hours. If the application was deemed admissible or if the person had not been informed of a decision within four days, he was authorized to enter Spanish territory. A document testifying to the person's status as an asylum-seeker and a temporary residence permit were issued to him. If necessary, he could avail himself of the welfare, educational and medical services. If the application was accepted on the basis of its merits, he could then reside and work in Spain under the protection of the State. Failing that, he had to leave Spanish territory by a given deadline. However, he could be authorized to remain in Spain, in particular on humanitarian grounds.

32. Mrs. VEVIA ROMERO (Spain), turning to the question of the implementation of article 4 of the Convention, said that the new Criminal Code, which would come into force in May 1996, classified as offences acts of racism, xenophobia, anti-Semitism and genocide, and also incitement to and provocation of such acts. In the case of genocide, the Criminal Code made the offence totally imprescriptible. In addition, the new Criminal Code outlawed organizations which incited discrimination, hatred or violence against individuals, groups or associations for reasons of religion or race and empowered the courts to disband racist organizations by a substantiated decision.

33. In reply to the questions asked by the Committee regarding articles 14, 22 and 8 of the Convention, she said that there was nothing to prevent Spain, in the near future, from making the declaration provided for in article 14, removing the reservation it had made in connection with article 22 and approving the amendment to article 8.

34. Mr. GONZALES DE LINARES PALOU (Spain) commended Mr. Ferrero Costa, Country Rapporteur, for his assessment of Spain's report, which demonstrated his thorough knowledge of Spain's political, social, economic and cultural reality and facilitated the dialogue with the Committee.

35. In reply to an allegation that the Spanish Constitution was discriminatory towards aliens, he said that in a general fashion article 13 of the Constitution set out the rights of aliens and article 14 the principle of equality before the law of Spaniards. Certain fundamental rights and duties did not apply to aliens. For example, in conformity with provisions that were subject to the principle of reciprocity, aliens living in Spain were not taxable if they already paid taxes in their own country. Under a number of agreements entered into with countries with which Spain maintained cultural relations, aliens were entitled to obtain Spanish nationality without losing their original nationality. Article 19 should by no means be viewed as

discriminatory towards aliens. Aliens were entitled to choose their place of residence and to travel freely in Spain. Nevertheless, certain restrictions applied in exceptional cases for reasons of national security, for example, for the purchase of land located near military facilities. Although he was not a specialist in constitutional law, there were detailed studies of the rights guaranteed to aliens and, in his view, the Spanish Constitution was rather progressive.

36. In reply to a question by Mr. Yutzis on the role played by the consul in issuing visas in connection with family reunion, he said that consuls performed the functions of administrative agents. Consequently, they ascertained that the applicant and the person already living on Spanish territory met the minimum legal requirements and sent the appropriate documents to Madrid, where the visa to allow family reunion was issued on the express authority of the central administration.

37. Regarding article 22 of the Convention, he pointed out that in 1990 Spain had deposited the unilateral declaration recognizing the competence of the International Court of Justice, and that the Ministry of Foreign Affairs favoured the withdrawal of the reservation made in respect of that article. He assured the members of the Committee that he would again intercede with the Government of Spain to request it to withdraw its reservation. He also hoped that Spain would shortly be in a position to ratify the amendment to article 8, paragraph 6, of the Convention, which had been adopted at the 14th Meeting of States Parties. The sluggishness of that procedure was solely attributable to bureaucratic reasons.

38. In reply to the question by Mr. de Gouttes on the number of Bosnians in Spain, he said that in December 1994 there had been 1,626 displaced persons from Bosnia and Herzegovina and 600 Bosnian prisoners of war from detention camps who had been granted refugee status, i.e. a total of about 2,230 Bosnian citizens. In the same month, the number of persons from the former Yugoslavia registered in Spain had been 1,216. However, those figures fluctuated constantly on account of the conflict.

39. Regarding the training of members of the police forces, he said that Spain was one of only two European countries, the other being Finland, where there was a police college responsible for training policemen in the principles of international humanitarian law. Policemen from other countries came to Spain to receive training in order to participate in peace-keeping and electoral assistance operations monitored by the United Nations. The training had made it possible to develop a new spirit among the members of the various State police forces.

40. Finally, in reply to Mr. Ahmadu's question about Spain's policy on the issuing of visas, he explained that since the Schengen Agreement had come into force, the procedure for issuing visas was much longer as all the member countries of the European Union must first be consulted. On the other hand, a visa issued in Spain was valid throughout the territory covered by the Schengen regime. However, he hoped that progress with data processing would enable the procedure to be speeded up.

41. Mrs. VEVIA ROMERO (Spain) thanked the members of the Committee for the attention with which they had listened to Spain's replies. She would provide the Committee with written replies to the questions on action to combat the employment of foreign labour and on the complaints lodged with the Defender of the People. In addition, her delegation would take the necessary steps to ensure that the Government gave Spain's periodic report the desired publicity.

42. The CHAIRMAN invited members of the Committee who wished to do so to make their observations on the replies provided by the Spanish delegation.

43. Mr. DIACONU said he regretted that the considerable volume of information provided by the Spanish delegation concerned questions which as a rule did not come within the scope of the Convention. In his view, the question of the treatment of aliens only came under the Convention when discrimination was practised between aliens of different nationalities. He hoped that the next report would contain information on measures which the Government of Spain planned to take to ensure that Castilians were able to study in their own language in Catalonia and the Basque Country. He asked whether the 14,000 Muslims in Ceuta and Melilla were considered to be fully-fledged Spanish citizens and, if so, why special identity cards were issued to them. He would also appreciate further information on the situation of minorities in each Autonomous Community, for example, on the situation of Castilians in Catalonia. He requested further details of the measures taken in respect of associations that encouraged racist behaviour. He was uncertain whether they were banned or clandestine. In conclusion, he observed that the system brought into being by the European Union might prove increasingly discriminatory with respect to nationals of other countries.

44. Mr. YUTZIS thanked the Spanish delegation for the wealth of information it had provided on matters which, in his view, all came within the competence of the Committee. He asked what the rate of illiteracy was among Gypsies and whether a distinction was made between "illiterates" and "semi-illiterates". On another statistical point, he asked why dropping out of school was assimilated to truancy.

45. Mr. FERRERO COSTA (Country Rapporteur) thanked the Spanish delegation for having replied in such detail to the questions of the members of the Committee. Unlike Mr. Diaconu, he did not believe that questions on the rights of aliens were beyond the competence of the Committee. Acts of racial discrimination against aliens were increasingly common in Europe and were a source of concern to members of the Committee.

46. For his part, he would appreciate more details on the demographic composition of Spain's population, on the implementation of article 4 of the Convention in the light of the new Spanish Criminal Code, on the policy pursued by the Government of Spain towards unlawful associations and on the implementation of article 5 of the Convention.

47. He suggested that Spain's next periodic report should be submitted in 1998 rather than 1996 as initially scheduled. To conclude, he commended

the Spanish delegation for its intercession with the Government to induce it to recognize the competence of the Committee in conformity with article 14 of the Convention and to withdraw its reservations on article 22.

48. The CHAIRMAN said that the Committee fully appreciated the considerable work required to prepare periodic reports and was duly grateful to the Government of Spain for its efforts. He expressed the hope that the Committee would be able to continue its fruitful dialogue with the Spanish delegation in 1998. The Committee had thus concluded the first part of its consideration of the periodic report of Spain.

49. The delegation of Spain withdrew.

The meeting rose at 1 p.m.



International Convention
on the Elimination
of all Forms of
Racial Discrimination

Draft
General

CERD/C/SP.1/47
11 March 1996

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-eighth session

SUMMARY RECORD OF THE 1147th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 8 March 1996, at 3 p.m.

Chairman: Mr. BANTON

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CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 14 OF THE CONVENTION (continued)

DRAFT GENERAL RECOMMENDATIONS

ORGANIZATION OF WORK

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The meeting was called to order at 3 p.m.

CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 14 OF THE CONVENTION
(agenda item 7) (continued)

1. The CHAIRMAN informed the Committee that a response had been received from a State party concerned by two or more of the communications pending, which could therefore be taken up at the Committee's next session. One of the other communications had been withdrawn from the list because the case had been settled in the State in question.
2. Mr. DIACONU asked whether the communication had been withdrawn by the author or by the State.
3. Mr. O'FLAHERTY (Secretary of the Committee) said that, according to information received that day from the State party, the case had been resolved through a domestic procedure and accordingly no longer needed to be considered by the Committee.
4. Mr. DIACONU said that it was not sufficient for the State party to indicate that the case had been dropped; the Committee needed to know whether the complainant considered the case to have been resolved and was willing to withdraw the complaint.
5. The CHAIRMAN took it that it would be acceptable for him to have further inquiries made and report back to the Committee.
6. It was so agreed.

DRAFT GENERAL RECOMMENDATIONS

Draft general recommendation on article 5 (CERD/48/Misc.6/Rev.2)

7. Mr. WOLFRUM, speaking as sponsor of the revised draft before the Committee, said that he had sought to accommodate the views and suggestions of members, in particular concerning paragraph 5. In the penultimate sentence of paragraph 1, he proposed, at the suggestion of Mr. Chigovera, that the words "proceeds from" should be replaced by "assumes", so that the sentence would read "Article 5 of the Convention [...] does not of itself create civil, political, economic, social or cultural rights, but assumes the existence and recognition of these rights". Explaining the changes he had made to paragraph 5, whose wording had been seen as too abstract and legalistic, he said that the first sentence was unchanged and the second sentence, reading "Such protection may be achieved by applying different means, be it by use of public or of private institutions", was substantially the same as in the previous version. The third sentence was self-explanatory. The fourth and final sentence reflected an issue that had been repeatedly stressed by the Committee, namely that vesting private institutions with certain functions in no way detracted from the obligations accepted by a State party under the Convention.

8. The draft general recommendation on article 5 was an agenda item of long standing and he did not believe that there was much room for improvement to the wording. He suggested that any proposals should be in the form of specific amendments and hoped that a consensus would be achieved without delay.

9. Mr. DIACONU proposed that the first sentence of paragraph 2 should end with the words "of the Convention" to be inserted after "article 1". The phrase "or otherwise with international human rights standards" should be deleted, since such standards were not the concern of the Committee. The words "Most of the rights" at the beginning of paragraph 3 should be replaced by "Some of the rights", since it was difficult to ascertain how many of those rights, such as economic, social and cultural rights, were to be enjoyed by all persons living in a given State. Allowance should be made, for example, for differences between developed and developing countries in their treatment of citizens and non-citizens. Although he shared the views reflected in paragraph 5, he had misgivings about the word "use", in the second sentence, in relation to private institutions. He therefore suggested that the phrase "be it by use of public or of private institutions" should be deleted, since in any case the idea it expressed was reflected in the rest of the paragraph.

10. Mr. WOLFRUM, supported by Mr. DIACONU, agreed to a suggestion by the CHAIRMAN that "Many" would be preferable to "Most" or "Some" in paragraph 3. Regarding the wording of paragraph 5, he agreed that the deletion proposed by Mr. Diaconu would not change the substance, but it might make the paragraph less intelligible to the reader. He pointed out that, although a State normally fulfilled its functions through public institutions, many countries also had recourse to independent private institutions or mechanisms, in such areas as health care, banking or insurance, and it was the State's duty to ensure that their practices, too, were in no way discriminatory.

11. Regarding Mr. Diaconu's proposal to delete the reference to international human rights standards, he pointed out that there might well be cases of discrimination in respect of international human rights standards that were not expressly spelled out in article 5 of the Convention. His intention had been to specify that there must be no racial discrimination in regard to any international human rights standards.

12. The CHAIRMAN suggested that, to accommodate Mr. Diaconu's objection to the word "use" in the second sentence of paragraph 5, which he assumed was also relevant to the word "applying" in the same sentence, the sentence should read "Such protection may be achieved in different ways, be it by public or private institutions".

13. Mr. DIACONU proposed that the latter part of the sentence, after "in different ways", should read "be it by the use of public institutions or through the activities of private institutions". In paragraph 2, he proposed that the last part of the first sentence should read "is incompatible with article 1 of the Convention as an integral part of international human rights standards".

14. The CHAIRMAN suggested that the word "any" should be inserted before "such restriction" in the last sentence of paragraph 2.

15. Mr. GARVALOV proposed that, for the sake of consistency, the words "of the Convention" should also be added after the reference to article 5 in paragraph 2.

16. Mr. WOLFRUM agreed, adding that the words "of the Convention" should be inserted after all references to articles in the text.

17. Mr. FERRERO COSTA called for a prompt decision on the text, since there appeared to be no substantive objections.

18. Following a request for clarification of the proposed amendments by Mr. VALENCIA RODRIGUEZ, Mr. WOLFRUM read out the amendments on which there appeared to be a consensus.

19. Mr. van BOVEN said he took it that stylistic improvements to the whole text would be made at the editing stage. Although the recommendation to States parties in paragraph 4 that they should report on the implementation of each of the rights and freedoms referred to in article 5 one by one appeared self-evident, experience had shown that States parties which also submitted reports to the Human Rights Committee did not always see the necessity of reporting separately on economic, social and cultural rights specifically from the perspective of racial discrimination, as required by the Convention. For the sake of clarity, therefore, a formula such as "from the perspective of their obligations under the Convention" might usefully be added to the text.

20. Mr. YUTZIS agreed with Mr. Ferrero Costa that the Committee should not dwell on stylistic changes if it agreed on the substance of the draft.

21. The CHAIRMAN said he took it that the Committee was in favour of Mr. van Boven's proposed amendment to paragraph 4, subject to the choice of an acceptable form of words, and that it approved the draft general recommendation as a whole, as amended.

22. It was so agreed.

Draft general recommendation on aspects of article 2 (CERD/48/Misc.7/Rev.3)

23. Mr. WOLFRUM, introducing the draft general recommendation on aspects of article 2, said that it was important to clarify the Committee's stance on secession by ethnic or religious groups or minorities on the basis of their right to self-determination. He hoped that the draft could be adopted by the end of the meeting, if possible by consensus, but by a vote if necessary. The subject had come up in discussions with non-governmental organizations (NGOs) and the Committee should make plain its opposition to secession on such a basis. General Assembly Declaration 2625 (XXV) on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations was one of the principal texts on which the draft had been based, in an effort to strike a balance that would reflect contemporary circumstances.

24. Mr. RECHETOV said that, while he would not stand out against the will of the Committee on a topic of such importance, he did not wish to be a sponsor of the draft recommendation as it stood. He questioned, for example, whether there was a real distinction between the "external" and "internal" aspects of self-determination, as paragraph 3 implied. It was not clear, from a reading of the last sentence of that paragraph, whether the "principles of equal rights" referred to human rights or to the rights of peoples and nations; if the latter, the reader would assure that the Committee supported the right of minorities to secede.

25. Mr. VALENCIA RODRIGUEZ suggested that paragraph 3 should be split into two paragraphs. The new paragraph 4 should begin with the words "In respect of the self-determination of peoples". It should be made quite clear that the Committee was not in the business of encouraging secession. A State that failed to guarantee equal rights and represent the entire population could face the danger of dismemberment or secession. Even the perception that those conditions had not been met could prompt secessionist tendencies among minorities, and he was concerned that the recommendation as it stood might convey the impression to such minorities that they were entitled to secede.

26. Mr. CHIGOVERA said that, to his knowledge, the Committee had no mandate to make pronouncements on self-determination. The Third Committee of the General Assembly had kept self-determination quite separate from racial discrimination in its deliberations on the matter, and had been far from unanimous in its assessment of the scope of the right to self-determination.

27. Mr. van BOVEN said that the nub of the draft was the statement in the last paragraph that, in the Committee's view, "international law has not recognized a general right of peoples to unilaterally declare secession from a State". With regard to the objections raised by Mr. Chigovera, he drew attention to the fourth preambular paragraph of the Convention, which had been adopted at the height of the struggle against colonialism in the 1960s. Some dependent territories remained, but decolonization was nearly complete. The right of self-determination, however, was not exhausted and the draft general recommendation should be seen in that light. The wording of the sentence to which Mr. Rechetov had referred was based on the Declaration already cited. The reference to the "liberation of peoples from colonialism" and the "prohibition to subject peoples to alien subjugation, domination and exploitation" illustrated the external aspects of self-determination and therefore represented an essential part of the text of the draft general recommendation.

28. Mr. DIACONU considered that the text raised difficulties both of principle and of legal interpretation. The second sentence of paragraph 3 seemed to imply that the recommendation was addressed to minorities within States, not the States themselves. Given the difficulty of deciding whether and to what extent a minority was a people, the suggestion in paragraph 4 that Governments should consider "vesting persons of ethnic or linguistic groups ... with competence to administer affairs which are particularly relevant to the preservation of the identity of such groups" raised delicate issues, on which the Committee's enterprise might well founder.

29. Mr. GARVALOV said that it was within the Committee's purview to express its views on secession. It always asked States parties about the ethnic composition of their populations and had been critical of States that had fallen short of the Convention's criteria. In the cases of Kosovo and the Chechen Republic, for example, the views expressed by the Committee had included opposition to demands for secession. He recognized that there were two schools of thought regarding ethnic minorities and that the Committee might sometimes have been perceived to be inadvertently encouraging ideas of independence among minorities. For that reason, the Committee should make it clear that it stood firmly against secession or the impairment of the integrity of independent States. Minorities should enjoy a measure of autonomy, but that did not extend to the right of self-determination as applied to former colonial countries.

30. The CHAIRMAN, responding to Mr. Diaconu's remarks as a member of the Committee, said that the need for the draft general recommendation had arisen as a result of developments in the Committee's work. The Committee had considered situations in which racial discrimination was only one element of a country's treatment of its minorities, but had found that article 1 gave insufficient guidance on the matter. Agreement on the recommendation would facilitate the ongoing work on the urgent action and early warning procedures. It would be addressed to States as an information document rather than a proposal for action.

31. Mr. FERRERO COSTA said that the purpose of the draft was to clarify the Committee's position on an extremely complex subject that came up frequently in its work. On the whole, the document was satisfactory. Paragraph 5, in particular, made it quite clear that the Committee did not support groups that were trying to secede from or dismember a State. The Committee was defending the territorial integrity and political unity of sovereign and independent States but, at the same time, urging that consideration be given to the internal self-determination and development of ethnic groups and minorities. In the event of a vote, he would be in favour of the text as it stood.

32. Mr. YUTZIS agreed that the draft was unambiguous in stating the Committee's position on the secession of minority ethnic groups and peoples. However, the emphasis placed on article 2 of the Convention weakened the intended message by understating the relevance of the Convention as a whole to the rights of ethnic groups. The text would be acceptable if certain drafting changes were made.

33. Mr. WOLFRUM, referring to comments made by members of the Committee, said that the draft general recommendation should be read as a whole because in its entirety it was a balanced document. The proposal that paragraph 3 be split into two was perfectly acceptable in that the text would be more readable. Equally valid was the suggestion that "principles" in the last sentence of paragraph 3 should be replaced by "principle". The objection to the last sentence of paragraph 4 was difficult to accept since the wording was not strong to begin with. Paragraph 5 was not likely to encourage ethnic minorities or peoples unilaterally to secede from a State. One of the purposes of the draft was to deal with the external aspect of self-determination, which was not adequately covered by the Convention, and thus provide the Committee with a firm basis for its work.

34. Mr. DIASINI said that he could not accept the reference to article 2 of the Convention in the title of the draft. Similarly, the second sentence of paragraph 3 should be deleted since it gave a false interpretation of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States. The Declaration itself should be cited in paragraph 4 rather than paragraph 3. The reference to "political status" should be transposed from the fifth to the last sentence of paragraph 3, which would then read: "The external aspect of self-determination implies that all peoples have the right to determine freely their political status, their place in the international community based upon the principles of equal rights ...".

35. In paragraph 4, the phrase "the aspirations of persons" should be replaced by "the rights of persons" and at the end of the paragraph, "competence to administer affairs" should be replaced by "the right to deploy such activities". In paragraph 5, "possessed of" should be replaced by "possessing".

36. Mr. AHMADU said that the draft seemed like a charter for many ethnic groups, especially in the third world, to secede. The importance of paragraph 5 needed to be highlighted, but overall difficulties of interpretation detracted from the value of the text and might even exacerbate the problems of countries which had to deal with secessionist agitators.

37. Mr. RECHETOV said that the Committee should adopt the draft general recommendation by consensus on the understanding that drafting changes could be made subsequently.

38. Mr. CHIGOVERA said that his reservations had not been dispelled by the debate. Regarding the reference to the fourth preambular paragraph of the Convention, the meaning of self-determination in the decolonization context was unlike the much wider meaning assigned to that term in the draft. It had been suggested in the Third Committee that further studies should be carried out into the new arguments surrounding the meaning of self-determination. In the event of a vote on the text, he would abstain.

39. Mr. WOLFRUM proposed a number of oral amendments to the draft general recommendation. The second sentence of paragraph 3 would be amended to read: "But the implementation of the principle of self-determination requires every State to promote, through joint and separate action, universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter". The fourth sentence of paragraph 3 would become the first sentence of the new paragraph 4, and the following paragraphs would be renumbered accordingly. In the new paragraph 4 the words "to determine freely their political status and" would be deleted from the second sentence, and in the fifth sentence the words "their place" would be expanded to read "their political status and place"; in the same sentence, the word "principles" would be replaced by "principle". In the third sentence of the new paragraph 5, the word "aspirations" would be replaced by "rights". In the new paragraph 6, the words "possessed of" in the eighth line would be replaced by "possessing".

40. Replying to a point raised by Mr. RECHETOV, he said that the reference to political status was understood to cover internal and external aspects alike.

41. Mr. DIACONU further proposed that, in the new paragraph 5, the words "and other relevant international documents" should be added at the end of the first sentence and that the words from "competence to administer" to the end of the last sentence should be replaced by "the right to engage in such activities which are particularly relevant to the preservation of the identity of such persons or groups".

42. The CHAIRMAN said he took it that the Committee wished to adopt the draft general recommendation, as orally amended, by consensus.

43. It was so decided.

ORGANIZATION OF WORK

44. Mr. YUTZIS said that the latest revision to the proposed programme of work did not give a timetable for discussion of early warning and urgent procedures or of matters relating to article 14 of the Convention.

45. Mr. WOLFRUM said that the Committee should receive a briefing, in a public meeting, on the situation in Rwanda.

46. Mr. GARVALOV said that consideration should also be given to the question of uniform texts of concluding observations and declarations by States parties under article 14.

47. Following a discussion in which Mr. WOLFRUM, Mr. GARVALOV, Mr. RECHETOV, Mr. DIACONU, Mr. CHIGOVERA, Mr. VALENCIA RODRIGUEZ, Mr. van BOVEN, Mr. YUTZIS and Mr. O'FLAHERTY (Secretary of the Committee) took part, the CHAIRMAN said that the timetable in respect of those matters would be considered at the Committee's next meeting and that, in the meantime, members were invited to study the various draft concluding observations, which had been circulated, with a view to transmitting their comments as quickly as possible to the respective country rapporteurs.

The meeting rose at 5.55 p.m.



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on the Elimination
of all Forms of
Racial Discrimination**

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Forty-eighth session

SUMMARY RECORD OF THE 1148th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 11 March 1996, at 10 a.m.

Chairman: Mr. BANTON

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The meeting was called to order at 10.10. a.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 5) (continued)

1. The CHAIRMAN invited the members of the Committee to consider a draft declaration on the situation of Rwanda prepared by Mr. Valencia Rodriguez (CERD/48/Misc.11/Rev.1) and a working paper on Bosnia and Herzegovina prepared by Mr. van Boven (CERD/48/Misc.13).

Rwanda: draft declaration on the situation of Rwanda (CERD/48/Misc.11/Rev.1)

2. Mr. VALENCIA RODRIGUEZ said that the draft took account of the information provided by the Representative of the Secretary-General and reflected the Committee's concern about the considerable number of detained persons in Rwanda and the spreading of intolerance by the media. The solutions proposed were, first, a continued United Nations presence in the country, in either a civilian or a military capacity, even if the United Nations Assistance Mission for Rwanda (UNAMIR) withdrew, and also the convening of a constitutional conference.

3. Mr. WOLFRUM said that he fully supported the draft declaration, but proposed that, if, as he believed, the Security Council had unanimously decided that the United Nations presence should come to an end, regret at that decision should be explicitly stated in the declaration.

4. Mr. CHIGOVERA said that he fully endorsed the contents of the declaration. The idea of convening a constitutional conference to re-establish a lasting peace should have been expressed earlier. He feared, however, that if there were no more United Nations staff members in contact with the Government and if UNAMIR withdrew, it would be quite difficult to convince the Government to abide by the proposals contained in the declaration.

5. Mrs. SADIQ ALI said that she was fully in favour of the declaration. She noted that, on 5 February, the Secretary-General had said that there were growing signs of a return to normality and a decrease in violence; 97 Canadian nationals had already been removed from the United Nations peace-keeping force in Rwanda. And yet, at the same time, refugees in Goma had been the victims of looting right before the eyes of UNHCR representatives, who had made an official protest. A continued United Nations presence in Rwanda was therefore absolutely essential.

6. Mr. LECHUGA HEVIA said that he endorsed the draft declaration, but wondered who would take the initiative of convening the conference in question.

7. Mr. de GOUTTES said that he fully endorsed the draft declaration, in particular because the number of detainees in Rwanda and the role of the media in spreading national and ethnic discrimination were matters of deep concern. He suggested that it should be ascertained whether Mr. Wolfrum's information on the withdrawal of UNAMIR was accurate in order to bring the text up to date or amend it, if necessary.

8. Mr. DIACONU said that he would like to know what the United Nations had asked for in exchange for the withdrawal of its forces, such as elections within six months, the refugees' return in safety or measures for the protection of minorities.

9. As for the text itself, he believed that, in paragraph 2, the Committee should deplore the withdrawal of UNAMIR and request the Secretary-General and all competent bodies to keep the situation in Rwanda under review.

10. The last paragraph of the declaration appeared to him to be a fairly hasty value judgement, for there was nothing to indicate that the international community was still making efforts in Rwanda. He proposed saying that those efforts would not be sufficient if structural measures were not taken so that an agreement acceptable to all inhabitants of Rwanda could be concluded on the organization of the Government, in order to guarantee the personal safety of all and build a democratic society, and that the Committee was recommending for that purpose that a constitutional conference should be convened in which all parties to the conflict would take part. The last sentence of the paragraph could remain as it was.

11. Mr. YUTZIS proposed that the members should tell Mr. Valencia Rodriguez what changes they suggested once the information on the situation of UNAMIR had been clarified.

12. Mr. GARVALOV said that he agreed that it was necessary to know exactly what decision the Security Council had taken in that regard and what official position the Rwandan Government had adopted on whether the United Nations should continue its work in Rwandan territory.

13. The third paragraph of the declaration might be slightly amended. The first sentence might end with the words "will profit by the holding of a constitutional Conference, which the Committee recommends", with the substance of the rest of the text remaining unchanged.

14. Mr. YUTZIS, speaking on a point of order and supported by Mr. Valencia Rodriguez, proposed that the consideration of the draft declaration should be suspended until the decision of the Security Council and the position of the Rwandan Government had been made known.

15. The CHAIRMAN suggested that another aspect of the Committee's work on Rwanda should be considered: the idea expressed by Mr. Wolfrum at the 1130th meeting that a working group should be set up to prepare a draft constitutional framework for Rwanda.

16. Mr. WOLFRUM said that it would be most useful for such a group to be established. A constitution should take the actual situation in the country in question into account; African jurists and experts in various fields should therefore work together with jurists trained in Roman law or common law. If the Conference in question was not carefully prepared, it might take as a model an existing constitutional framework that did not meet Rwanda's needs. The working group should meet before the Committee's summer session so that the Committee could consider its suggestions.

17. Mr. YUTZIS noted that the proposal for the establishment of a working group on a Rwandan constitution reflected a concern of the Committee often expressed in the case of other countries and more concretely in the case of Bosnia and Herzegovina; in his opinion, the Committee would eventually establish several parallel working groups.

18. Mr. van BOVEN said he wondered what exactly the mandate of the working group in question would be, and, in particular, whether it would be limited to the States from the Great Lakes Region or a particular group of other States. That was a question that should be looked into before the working group was set up.

19. The CHAIRMAN said that, in his understanding, the Committee was about to establish an intersessional working group that would look into the case of Rwanda, but that its deliberations and conclusions would be useful when another working group looked into the case of a State whose situation was similar.

20. Mr. CHIGOVERA noted in that connection that Burundi's only difference from Rwanda was its recent history and that the two States had comparable problems. The activities of the working group on Rwanda would therefore certainly be quite useful to Burundi.

21. Mr. YUTZIS said that the document entitled "Bosnia and Herzegovina in the Light of the Dayton Peace Accords" and submitted by Mr. van Boven (CERD/48/Misc.13) gave an example of how the Committee's activities relating to different countries might dovetail. Paragraph 5 of the document suggested a way in which the Committee might contribute to the establishment of peace in Bosnia and Herzegovina and, in his view, the same thing could be done for Rwanda. However, as Mr. van Boven had requested, the Committee must state clearly what mandate it intended to give each of the working groups and must be able to consider both groups' conclusions at its next session.

22. Mr. de GOUTTES said that, although Mr. van Boven's and Mr. Wolfrum's proposals did not enter into the same framework, they might have some common points. For example, the idea suggested by Mr. van Boven of asking the Working Group on Bosnia and Herzegovina to make contact with a series of bodies working on the same country might be taken up by the working group that would be dealing with Rwanda. Such contacts might mean that the Committee would not have to carry out much too isolated a task. He intended to speak to the High Commissioner for Human Rights, with whom he was to meet later that morning, about the advisability of such contacts.

23. Mr. WOLFRUM said that he endorsed Mr. de Gouttes' initiative. He stressed, however, that, in the case of Bosnia and Herzegovina, the Dayton Accords would serve as a working basis, whereas the working group dealing with Rwanda would not have such a document available. That might, moreover, be a way for the Committee to contribute to the establishment of parameters for peace. As Mr. Yutzis had already said, it might first try to form a precise idea of the situation, to which end it would work closely with the secretariat and the competent bodies. It might also make suggestions relating to a future

constitution, which would take account of the situation in Rwanda, and also in Burundi. In so doing it might make use of the Constitutions of other States from that region or of States having experienced the same problems, such as Cyprus or Fiji.

24. However, even more than the Constitution, the working group and the Committee should focus their attention on the lower echelons of the administration, such as the municipalities, and also on questions relating to the judicial system, the resettlement of refugees and the restitution of property. Such problems were as real and concrete as they were difficult to solve and the working group might prepare a sort of summary of the practical aspects of the situation for discussion at the Committee's next session.

25. Mr. YUTZIS said that the situation in Rwanda and the situation in Burundi were very different for cultural and historic reasons. Each of the working groups should discuss in detail how the Committee might make a specific contribution not only to strengthening both countries' institutions, but also to repairing the social fabric, which had been very badly torn.

26. Mr. RECHETOV said that no one could be certain that, within a year, peace would have been established in Rwanda, Bosnia and Herzegovina or even the Middle East. In Bosnia and Herzegovina, for example, the situation might still worsen, as the many inhabitants fleeing Sarajevo and the problems in Srebrenica might indicate. Working groups should therefore not be short-lived and should be made up of voluntary experts who were genuinely interested in the problems of the countries concerned and would make constructive and well-thought-out proposals, in particular in the constitutional area, for submission to the international community.

27. The CHAIRMAN suggested that the working group on Rwanda should be established forthwith, with Mr. Wolfrum coordinating its work and clarifying its mission. At its following session, the Committee might specify the working group's mandate and, in view of the results achieved, decide whether it should pursue its mission.

28. It was so decided.

Bosnia and Herzegovina: discussion paper on the Committee's contribution to the implementation of the Dayton Accords (CERD/48/Misc.13)

29. Mr. van BOVEN drew attention to an error in the text: The words "if the Committee so wishes" at the beginning of paragraph 4 should in fact appear in the last sentence of paragraph 3, after the words "This includes CERD". He hoped that the paper would help the Committee to take measures regarding Bosnia and Herzegovina and the implementation of the Dayton Peace Accords. Although the Accords were not in conformity with the provisions of the Convention in all respects, they had at least put an end to the killing. In any event, they had been signed by the parties to the conflict and it was for the Committee to make specific proposals to ensure that they were implemented on the basis of respect for the principles embodied in the Convention, especially with regard to annexes 6 and 7, which dealt with human rights and refugees and displaced persons respectively.

30. In that spirit, the Committee might consider four types of action (para. 5 of the discussion paper). It might first request one or more of its members to consult with the OSCE, the Council of Europe, the High Representative appointed under the Dayton-Paris Peace Accords, the United Nations High Commissioner for Human Rights, the United Nations High Commissioner for Refugees and other concerned bodies, with a view to making recommendations as soon as possible for follow-up action by the Committee.
31. Second, it might institute a process of consultation with the authorities of the Government of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska on how its good offices might be drawn upon to promote understanding between races and ethnic groups and to build a society free from all forms of racial or ethnic segregation and discrimination.
32. Third, it might seek, as soon as practically possible, a meeting between a delegation of its members and the newly established Commission on Human Rights for Bosnia and Herzegovina so as to make its experience available to that Commission.
33. Lastly, it might invite the successor republics of the former Yugoslavia to a special workshop to discuss possibilities of future cooperation among them on the promotion of the principles of equality and non-discrimination, particularly for ethnic communities, nationalities and minorities.
34. The different options were not mutually exclusive and the Chairman might wish to coordinate the various steps the Committee decided to take, in consultation with the Bureau and the coordinator for agenda 5. The financial implications should be looked into with the secretariat. Concerning the second option, he saw no reason not to mention the parties to the conflict explicitly.
35. Mr. RECHETOV said that he fully endorsed the ideas expressed by Mr. van Boven and that the international community should make every effort to enable the refugees to return home. He was concerned about the fact that, despite the war's end, thousands of people were continuing to flee, not, as some claimed, because they had been given orders to do so, but simply because they were afraid.
36. At a time when the Committee was preparing to take a new initiative concerning Bosnia and Herzegovina, it appeared to have forgotten the mission it had undertaken in Kosovo two years before. If it wished to retain its credibility with the international community, it should conclude the task it had begun in that region.
37. Mr. de GOUTTES said that he fully endorsed Mr. van Boven's proposals, which would enable the Committee to make its contribution to the implementation of the Dayton Peace Accords. The members of the Committee would have to share out the tasks covered in those proposals among them. He was prepared to contact the Council of Europe. He would also like to know whether he might show Mr. van Boven's discussion paper to the

High Commissioner for Human Rights, whom he was to meet in a few minutes. In conclusion, he did not believe that there was a contradiction between the Committee's mission in Kosovo, which Mr. Rechetov had done well to mention, and the initiatives the Committee might take regarding Bosnia and Herzegovina.

38. Mr. WOLFRUM said he fully supported the proposals made by Mr. van Boven in paragraph 5 of the discussion paper. He regretted, however, that the first four paragraphs did not sufficiently stress the fact that the Dayton Accords said nothing of issues like the fate of Zepa and Srebrenica or what means should be used to guarantee the refugees' return in complete safety and enable voters to vote in the places where they had lived before the conflict. In view of the events taking place in Mostar and Sarajevo, where neighbourhoods were being burned down with the peace-keeping forces taking no action, the Committee should demand the full implementation of the Dayton Accords by all the parties.

39. The mission organized by the Committee in Kosovo, which had been considered a success by all the parties, had been interrupted owing to circumstances beyond the Committee's control. The Committee should renew contact with the parties concerned in order to pursue that mission.

40. Mr. DIACONU noted that the Dayton Accords were a compromise: their primary objective was to end the war, not to consider the question of racial discrimination. It was important for the Committee to make a useful and structured contribution in the context of the global efforts being deployed by the United Nations in Bosnia and Herzegovina to provide for the reconstruction of the country on the bases laid down at Dayton. To that end, the Committee should ask the High Commissioner for Human Rights how he envisaged the consultations among the various United Nations bodies, the authorities of Bosnia and Herzegovina and the new Commission on Human Rights. After the elections in Bosnia and Herzegovina, the Committee might help the new authorities to draft a new constitution and implement the Convention. He proposed that the Committee should resume its good offices mission in Kosovo and, in that connection, he would like to know whether the Federal Republic of Yugoslavia (Serbia and Montenegro), which had opposed such a mission, had been represented at the last Meeting of the States Parties to the Convention in January 1996.

41. The CHAIRMAN said that, as far as he recalled, the Federal Republic of Yugoslavia (Serbia and Montenegro) had not been excluded from the last Meeting of States Parties, but he did not believe that it had participated.

42. Mr. CHIGOVERA said that it was difficult for him to give an opinion on the various options proposed by Mr. van Boven, for he had not had the opportunity to read the Dayton Accords. He noted, however, that the massacres perpetrated in the ethnic cleansing operations had come to an end, even if confidence did not yet seem to have been restored. According to the information transmitted by the media, many Serbs were fleeing Sarajevo, creating a new group of refugees. It would be useful for the Committee to have more recent information on the situation in Bosnia and Herzegovina.

43. The CHAIRMAN noted that four copies of the Dayton Accords were available for the members of the Committee who wished to consult them.

44. Mr. YUTZIS said that the text proposed by Mr. van Boven raised a challenge for the Committee. It had to be acknowledged that the Dayton Accords were necessary but insufficient, for they simply helped to reduce some tension, but that did not mean that the conflict had been settled. However, the Committee should not be too critical of the authors of the Accords. Precise objectives should be set to try to reconstitute the social fabric of Bosnia and Herzegovina. He hoped that a working group would be established within the Committee to look into those questions.

45. Mr. SHERIFIS said he found the idea expressed in paragraph 5 of the document prepared by Mr. van Boven that a special workshop should be organized to discuss possibilities of cooperation among the successor republics of the former Yugoslavia very interesting, but he wondered whether the Committee was not putting the cart before the horse by taking decisions before finding out what resources were available to it. While he endorsed the proposal that the Committee should hold consultations with the authorities of Bosnia and Herzegovina, he believed that the Committee's efforts should be part of a coordinated and global process of action by the United Nations in that area and be clearly defined in advance. He also supported the proposal of a meeting between a Committee delegation and the newly established Commission on Human Rights for Bosnia and Herzegovina and the proposal that a member of the Committee might be entrusted with consultations with various bodies in order to make recommendations for follow-up action, but there, too, he believed that it would be appropriate to decide in advance on practical ways of implementing those two proposals.

46. Mrs. SADIQ ALI said that she would like information on the precise role of the international police force entrusted with overseeing the implementation of the Dayton Peace Accords throughout the territory of Bosnia and Herzegovina. In her understanding, when Vogoska, the old Serbian suburb of Sarajevo, had come under Government control, all the inhabitants had fled for fear of reprisals. She was very concerned about that new form of ethnic cleansing. She would also like to know what steps were being planned to ensure the return of the refugees and displaced persons to their homes.

47. She supported the proposal that a member of the Committee should be requested to hold consultations with various bodies and agencies and suggested that Mr. van Boven and Mr. Garvalov should draft recommendations on follow-up action by the Committee by the end of the current session. She was in favour of the idea of organizing a special workshop with the successor States of the former Yugoslavia.

48. Mr. GARVALOV said that the document proposed by Mr. van Boven appeared to be a very ambitious one but that the options it proposed were well within the Committee's competence under the Convention and in keeping with the provisions of the Dayton Accords. Even if they did not guarantee a lasting peace, the Accords had made it possible to put an end to the war. He believed that the Committee should focus its attention on the possibilities of direct consultation with Bosnia and Herzegovina and he suggested that the Chairman of the Committee should write a letter to the Minister for Foreign Affairs of

Bosnia and Herzegovina describing the decisions taken by the Committee. Concerning the options proposed in paragraph 5 of Mr. van Boven's document, he believed that the Committee should inform the various bodies mentioned of the specific role it could play in the framework of United Nations action.

49. The Committee should prepare a separate document on the situation in Bosnia and Herzegovina under agenda item 5. He joined the members of the Committee who would like to know the opinion of Serbia and Montenegro on the resumption of a mission in Kosovo.

50. Mr. AHMADU expressed regret at not having received the text of the Dayton Accords, to which Mr. van Boven's document made repeated references. He welcomed the document, however, since he believed that the Committee's competence and knowledge authorized it to take initiatives regarding racial discrimination with a view to encouraging the successor States of the former Yugoslavia to accede to the Convention. As to the second subparagraph of paragraph 5 of the document, he agreed with Mr. Aboul-Nasr that the Committee should in no event establish official contact with the Republika Srpska. On the other hand, he was in favour of the last two options proposed in paragraph 5 and supported Mr. Garvalov's suggestion that the Chairman of the Drafting Committee should draft a letter to that effect. He was not certain that the Committee should discuss the question whether the Federation of Bosnia and Herzegovina, which was not even a member of the United Nations, was a party to the Convention.

51. Mr. DIACONU said that he wondered whether, under the Dayton Accords, the Federation of Bosnia and Herzegovina and the Republika Srpska had to ratify the Convention separately. If Bosnia and Herzegovina was a party to the Convention, the Committee should hold consultations with its Government and take the necessary steps to ensure the implementation of the Convention throughout the territory. However, he stressed again the fact that the Government of Bosnia and Herzegovina was a temporary Government and that a new Government was shortly to be elected. He would also like to know whether the Commission on Human Rights for Bosnia and Herzegovina was a governmental or non-governmental commission and, if the former, whether it was representative of all of Bosnia and Herzegovina. Would similar commissions be established for the Federation of Bosnia and Herzegovina and for the Republika Srpska? It would not be reasonable to enter into a dialogue with a commission that represented only part of the country.

52. Mr. WOLFRUM noted that the three signatories of the Dayton Accords were the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia. However, in annex I.A of the Accords, which concerned the military aspects of the peace settlement, the signatories were the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska. It was obvious, however, that the Republika Srpska could not become a party to the Convention, since it was only one of the two entities making up Bosnia and Herzegovina.

53. Mr. van BOVEN said that his document had been meant as a basis for discussion and had not been intended for adoption as such. On the question of Kosovo, which was not dealt with in the document, he fully agreed with the members of the Committee who considered that the Committee should resume its efforts in that region, which remained a potential cause of conflict. Concerning the document itself, he acknowledged that the introductory paragraphs might have been drafted differently: their purpose was primarily to summarize the contents of annexes 6 and 7 of the Accords, with which many persons were not familiar. The most important paragraph of the document was paragraph 5. Mr. Banton and Mr. Diaconu had stressed an important point in recommending that the Committee should act through the special relations it had with the States that were parties to the Convention, for the Dayton Accords concerned the parties to the conflict. If account was taken of the Constitution of Bosnia and Herzegovina, it was clear that Bosnia and Herzegovina was the State party with which the Committee should deal. The wording of paragraph 5 should therefore be changed. On another matter, some members of the Committee had suggested that it should not act on its own, as it was empowered to do as a body established under the Convention, but in consultation and close coordination with the United Nations High Commissioner for Human Rights. He believed that was a sound idea which would make it possible to avoid duplication of effort.

54. With regard to the financial implications of the measures mentioned in paragraph 5, the Committee should have a discussion with the Under-Secretary-General for Human Rights with a view to finding the necessary extrabudgetary resources. It would naturally have to consider closely how specifically to implement those measures, but it was important, initially, for it to show its clear determination to help implement the Dayton Accords. He intended to prepare an amended version of his document taking into account certain suggestions made during the discussion.

55. Mr. de GOUTTES said that he would like to inform the members of the Committee of the results of the meeting he had held that morning with the United Nations High Commissioner for Human Rights. He had told the High Commissioner about the Committee's past and present prevention activities and its draft recommendations on Bosnia and Herzegovina and Rwanda. The High Commissioner had shown a keen interest in those initiatives, especially with regard to Bosnia and Herzegovina and the implementation of the Dayton Accords, and he had decided to meet the Committee the next day to discuss them. It was therefore very important for the Committee to be able to present the High Commissioner with specific proposals.

56. He had informed the High Commissioner that the proposals in question would have financial implications and the High Commissioner had reminded him of the budgetary restrictions in force. The High Commissioner had said that it was essential to strengthen cooperation between the Committee and the Office of the High Commissioner and had stressed the advisability of organizing regular contacts between the two in order to avoid duplication of effort, as well as the need for the Committee to make specific proposals for following up the emergency situations identified and for offering its services and the need for it to make better use of its relations with the High Commissioner to strengthen its cooperation with other United Nations and

regional bodies working on racial discrimination. In the High Commissioner's view, it was better both practically and financially speaking for the Committee itself to invite the representatives of those bodies before it to present their work rather than send one of its experts to attend their meetings.

57. The CHAIRMAN said that the consideration of the question would be suspended in order to give Mr. van Boven time to draft a new version of his document taking into account the various comments made, as well as the statement to be made by the Under-Secretary-General for Human Rights.

The meeting rose at 1 p.m.



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on the Elimination
of all Forms of
Racial Discrimination**

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Forty-eighth session

SUMMARY RECORD OF THE 1149th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 11 March 1996, at 3 p.m.

Chairman: Mr. BANTON

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The meeting was called to order at 3 p.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 5) (continued)

Report from Guatemala

1. Mr. YUTZIS (Country Rapporteur) said that the Committee had received the report requested from Guatemala. He suggested that it should be considered at the next session of the Committee.
2. The CHAIRMAN took it that the Committee wished to take no action until the report had been considered. Guatemala should remain on the list under the early warning and prevention procedure, pending a further decision by the Committee in that regard.
3. It was so decided.

Situation in Burundi

4. Mrs. SADIQ ALI (Country Rapporteur) said it was feared that events in Burundi - with the spread of violence and the rising death-toll - could explode into slaughter and genocide. The Government was torn by dissension and too weak to take firm measures to stop the killings. The Hutu President and the Tutsi Prime Minister had accused each other of backing rival militias. The Tutsi militants had been responsible for shutting down all activity in Bujumbura in January 1996, thus demonstrating their grip on the affairs of the country.
5. The United Nations alone was making a real effort to defuse tensions and prevent more violence: the High Commissioner for Refugees had obtained assurances from the Government, in early January, that it would protect United Nations and aid workers and support their humanitarian mission. However, the Security Council was wary of sending a peace-keeping force, mainly because of Government opposition and difficulties in finding troops and personnel. The United Nations Secretary-General had urged the Security Council to review the situation, station a rapid-reaction force on the border with Zaire as a preventive measure and send police guards to protect relief workers. The latter suggestion was opposed even by relief agencies, as it would make the lightly armed United Nations personnel particularly vulnerable. The Secretary-General had appointed a Special Representative for Burundi, and the Security Council had asked the Government to take measures to put a stop to the widespread violence, but had turned down earlier separate requests for the dispatch of United Nations peace-keeping forces and observers. It had, however, strongly condemned the violence, asked neighbouring States to prevent the perpetrators of violence from seeking support abroad and called for an end to radio broadcasts inciting hatred and acts of genocide.
6. In the meantime, the Hutus of Burundi had organized militias to defend themselves. Recent reports indicated that Hutu refugees from Burundi in Zaire were receiving military support from Hutus of the former Rwandan army. Tanzania had offered to intervene militarily in Burundi and restore order,

but the problem of financing was the main obstacle to such an intervention. Hostility between the two ethnic groups was degenerating into random massacres and outright war. Hutu guerrillas had been emboldened by recent successes against the Tutsi-dominated national army, including the sabotage of power plants and the disruption of the capital's water supply.

7. The CHAIRMAN said that it remained for the Committee to decide on any action to be taken in regard to that and other matters outstanding under item 5.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Situation of Madagascar

8. Mr. de GOUTTES (Country Rapporteur) recalled that in August 1995 Madagascar had requested a deferral of the deadline for submission of its periodic report. The Committee had regretted that no report had been received since October 1986, but bearing in mind the country's difficulties it had noted the request and asked it to submit a report for the current session. The report requested had not been forthcoming.

9. Madagascar had undergone a number of political upheavals: the end of the Marxist regime, the transition period, the establishment of the Third Republic, the referendum of September 1995 on revising the Constitution, the change of government in October 1995, and municipal elections in November 1995. Together with the persistent political instability and the alarming deterioration in the economic situation, such circumstances made the delay in submitting a report understandable, although Madagascar ought to have made some contact with the Committee. In accordance with recent practice, therefore, the Committee should draw on all available sources of information in order to prepare a set of questions to be put to the Government of Madagascar.

10. One such source was the ninth periodic report, containing information now largely out of date. Another was the record of the Committee's consideration of that report in August 1989, in the presence of a representative of Madagascar, when the Committee had noted the conflicts between ethnic groups, the violence directed at the Indian, Pakistani and Chinese communities and the inadequate level of compliance with article 4 of the Convention. Thirdly, there was the core document submitted by Madagascar in 1993, containing useful background information on the country, such as its large number of ethnic groups, sociocultural problems, growing poverty, difficulties of access to medical services - leading to a high mortality rate - and an alarming drop in school attendance. It had also contained details of the new Constitution of 1992.

11. Other available information included Madagascar's reports to the Human Rights Committee in 1991 and the Committee on the Elimination of Discrimination against Women (CEDAW) in 1994, together with those committees' observations. There were also reports by the State Department of the United States, by non-governmental organizations and human rights

associations, by the organization Solidarité Madagascar-Suisse in 1994 on the situation of children's rights in Madagascar and by International Women's Rights Action Watch for CEDAW in 1993.

12. On that basis, Madagascar should be urgently requested to provide updated information on the ethnic composition of its population, political developments following the events of the past year and the social situation, particularly the inter-ethnic tensions which apparently persisted. Worst affected were the Indian and Pakistani communities which, although financially well off, were subject to discrimination and occasional violence. More information should also be given regarding the increasing poverty, particularly in rural areas, along with deteriorating access to health services and a worsening situation with regard to schools and school supplies.

13. Information was also required about the economic situation. Essentially agricultural in nature, the economy had suffered from the changes in regime: coffee, vanilla, clove and even rice production had suffered. Rural banditry, meanwhile, had increased. The International Monetary Fund's structural adjustment programme, due to start in November 1993, seemed to have been delayed. The result would be extreme poverty for large sections of the population, which already suffered from inflation, unemployment, inadequate housing, the lack of social protection and the breakdown of public services.

14. Madagascar should also be required to furnish details of the way in which it implemented each article of the Convention. Specifically, it should be asked for details of its criminal legislation for the punishment of acts of racial or ethnic discrimination, in accordance with article 4. That information had already been requested in 1986. The legal procedures through which perpetrators of racist acts could be convicted and compensated, in accordance with article 6 should be specified. Statistics of actual cases would be useful in that context. Details regarding the operation of the judicial system would also be welcomed. Information on the powers of the ombudsman appointed in 1992, and on any success he might have had in combating racial discrimination, should also be provided. Details were required of any measures taken to alleviate the effects of the economic crisis on the most disadvantaged sections of the population with regard to their enjoyment of the rights enunciated in article 5. Of particular concern were the right to health, medical care, social security and social services, given the alarmingly high child and female mortality rates and the difficulty of access to medicines and health services for the poorest sections of the population; according to the Solidarité Madagascar-Suisse and the CEDAW reports, social protection seemed to be confined to a privileged minority. Information should also be given regarding the right to education and training. Children's access to schooling was deteriorating in many parts of the country and there were fewer and fewer - and less well-trained - teachers in rural areas, in contrast to the quality of teaching in the private schools attended by the children of the affluent. At the same time there was a proliferation of videos and video clubs which could account for the high crime rate among disadvantaged youth. Lastly, pursuant to article 7, Madagascar should be asked to give details of measures taken or proposed in the fields of teaching, culture, education and information, with a view to promoting tolerance among racial or ethnic groups, and to indicate what action had been taken on human

rights education and specifically on promoting awareness of the Convention among students, teachers and State officials, including the police and the judiciary.

15. All that information was required urgently. Madagascar should approach the Centre for Human Rights for guidance on how to present its report.

16. The CHAIRMAN suggested that concluding observations regarding the situation in Madagascar should be drafted, of a length and character consistent with other concluding observations, and that the State party should be sent a copy of the summary record to indicate in detail what information was required.

17. It was so decided.

Draft concluding observations concerning the initial report of Zimbabwe
(CERD/C/217/Add.1)

Paragraph 5

18. Following remarks by Mr. DIACONU, Mr. SHERIFIS and Mr. van BOWEN, the CHAIRMAN suggested that the first sentence of paragraph 5 should be amended to read: "The record of the governments in power since the independence of Zimbabwe (18 April 1980) in progressively building democracy ...".

Paragraph 11

19. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) suggested that paragraph 11 should read: "Concern is expressed that the parallel system of private schools for parents who can afford them and public schools for others results in a racially segregated school system."

Paragraph 13

20. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) suggested that the last sentence of paragraph 13 should be amended to read: "For example, the descendants of blacks who die intestate inherit according to customary law while whites inherit according to general law."

Paragraph 15

21. The CHAIRMAN, in response to concerns expressed by Mr. YUTZIS, suggested that the word "absence" could be replaced by "insufficiency".

Paragraph 18

22. The CHAIRMAN, responding to comments made by Mr. GARVALOV and Mr. WOLFRUM, suggested that the Committee should agree to a proposal by Mr. DIACONU for the insertion of the phrase "in the areas where minorities live in substantial numbers".

Paragraph 20

23. The CHAIRMAN, taking note of amendments proposed by members of the Committee, suggested that the text could include a reference to the aim of promoting the prevention of racial discrimination.

Paragraph 21

24. The CHAIRMAN, responding to a proposal by Mr. de GOUTTES, said that the paragraph could be amended to read: "More qualitative information is required in the next report concerning the programmes of land distribution ...". A new paragraph 22 could then be inserted, to read: "The Committee also recommends that the next periodic report contain complete information on complaints and sentences imposed for racial or ethnic discrimination."

Paragraph 24

25. The CHAIRMAN responding to proposals by Mr. van BOVEN and Mr. VALENCIA RODRIGUEZ, suggested that the reference to "12 June 1994" should be deleted and the text amended to read: "The Committee recommends that the State Party's next periodic report be comprehensive in character and that it address all the points raised in these concluding observations."

26. The CHAIRMAN said he took it that the Committee wished to adopt the draft concluding observations concerning the initial report of Zimbabwe, subject to amendments proposed during the discussion and possible drafting and editorial changes.

27. It was so decided.

Draft concluding observations concerning the sixth and seventh periodic reports of Colombia (CERD/C/257/Add.1)

Paragraph 9

28. Mr. DIACONU proposed that the phrase "and the security of persons" should be inserted after "the right to life"

Paragraph 12

29. Mr. DIACONU proposed that the second sentence of the paragraph should be amended to read "Such mechanisms should promote full benefit of all human rights by the members of these communities and guarantee life and security as well as actual and adequate participation..."

Paragraph 14

30. Mr. WOLFRUM proposed that the word "encourages" should be replaced by "expects".

31. Mr. DIACONU proposed the deletion of the reference to "political" rights

Paragraph 14 (a)

32. The CHAIRMAN said that he took it that paragraph 14 (a) would become new paragraph 15 in the final text.

Paragraph 18

33. The CHAIRMAN, replying to a comment by Mr. VALENCIA RODRIGUEZ, suggested that the wording and textual position of the paragraph could be altered in accordance with the Committee's standard editorial practice.

Paragraph 19

34. The CHAIRMAN said that, as with paragraph 18, the Committee's standard editorial practice would be respected.

Paragraph 20

35. Mr. van BOVEN suggested that, in response to concerns raised by members of the Committee regarding the lack of information on certain topics in the report on Colombia, the words "and that it address all the points raised in these observations" should be added at the end of the paragraph.

36. The CHAIRMAN said he took it that the Committee wished to adopt the draft concluding observations concerning the sixth and seventh periodic reports of Colombia, subject to amendments proposed during the discussion and possible drafting and editorial changes.

37. It was so decided.

Draft concluding observations concerning the tenth, eleventh and twelfth periodic reports of Denmark (CERD/C/280/Add.1)

Paragraph 1

38. Mr. ARMADU, supported by Mr. van BOVEN and Mr. CHIGOVERA, proposed that the words "the balancing" in the third line should be replaced by "due balancing".

39. Mr. de GOUTTES, supported by Mr. YUTSIS, said that it would suffice simply to reflect the need for a balance, while making it clear that the Committee did not endorse the judgement of the European Court of Human Rights.

40. Mr. VALENCIA RODRIGUEZ suggested that a reference to the Committee's general recommendation XV should be included in the text of the paragraph.

41. Mr. de GOUTTES regretted that the Committee was obliged to discuss complex amendments on the basis of only one language version of the text.

42. The CHAIRMAN said that the Committee had to work within certain budget constraints. It was understood that members had the right, with regard to any draft concluding observations, to decide which language version would best serve their deliberations.

Paragraph 4

43. Mr. DIACONU proposed that the words "The increase in unemployment" at the beginning of the second sentence should be replaced by "The high level of unemployment".

44. The CHAIRMAN, responding to an observation by Mr. CHIGOVERA, suggested that the word "even" should be inserted before "more important".

Paragraph 10

45. Mr. DIACONU felt that the Committee should not condone the "attempts of municipalities to prevent undue concentrations of ethnic minority families", which might be interpreted as a form of ethnic cleansing.

46. Mr. van BOVEN said that the attempts in question were consistent with the provisions of article 3 of the Convention.

47. The CHAIRMAN suggested that the paragraph should be reworded to read: "The Committee is anxious that the attempts of municipalities to prevent undue concentrations of ethnic minority families in 'socially-burdened' urban neighbourhoods shall not be discriminatory in effect."

Paragraph 11

48. Mr. BARVALOV said that it was wrong to imply that the Committee viewed with equal concern the lack of convictions against racist groups and the granting of licences to such groups to operate a radio station and a telephone number.

49. Mr. WOLFRUM said that the textual position of the last sentence of the paragraph was wrong. It should be included as a recommendation under section E.

50. The CHAIRMAN suggested that the last sentence should be deleted, and that the phrase "with concern" at the end of the second sentence should be expanded to read "with special concern".

Paragraph 14

51. The CHAIRMAN suggested that the phrase "specific policies" should be replaced by "dispersal policies".

Paragraph 15

52. Mr. van BOVEN proposed that the paragraph should be expanded to include the phrase "and calls attention to its general recommendation XV".

53. The CHAIRMAN said it was felt that section E, Suggestions and recommendations, should contain some wording on measures to prevent racist propaganda through radio broadcasting and telephone messages. He therefore suggested that an additional sentence might be inserted, with the following wording: "The Committee recommends that the licensing of groups to operate a

radio station and recorded-message telephone services be closely monitored and that the licences be withdrawn if there is any infringement of article 4 of the Convention".

54. Mr. van BOVEN, supported by Mr. DIACONU, said that, although a Government could be expected to monitor operations and withdraw licences if the Convention's provisions were infringed, it should not be expected to place a ban, at the outset, on organizations whose purposes were not prima facie illegal.

55. Mr. GARVALOV maintained that the very granting of a licence in the first place would contravene article 4 of the Convention.

56. Mr. WOLFRUM suggested that the Committee could refer to paragraph 11 and reiterate the concern already expressed.

57. Mr. YUTZIS emphasized the distinction between the monitoring of existing broadcasting facilities and the granting of licences to racist organizations to operate new facilities; the latter practice should not be authorized.

58. The CHAIRMAN said that a further distinction should be made between refusal to grant a licence and withdrawal of a licence in the case of an infringement.

59. Mr. CHIGOVERA said that it might help to revert to paragraph 11 and amend the words "which people can call" in the second sentence to read "to which people allegedly call".

60. Mr. DIACONU felt that paragraph 11 should be left as it stood, and that paragraph 15 should be expanded to include a reference to recorded messages and telephone services in violation of the Convention, drawing attention also to the Committee's general recommendation XV.

61. Mr. AHMADU thought that the Committee should clearly recommend withdrawal of a licence, and saw no need for a reference to allegations.

62. The CHAIRMAN suggested that, in paragraph 11, the words "which people can call" could be amended to read "to which people allegedly can call", and that paragraph 15 could be expanded by adding: "If the allegations in paragraph 11 above are correct, then the licences should be withdrawn to comply with article 4 of the Convention".

63. Mr. YUTZIS said that his concerns about paragraph 15 would be met by including the following wording:

"Pursuant to article 4 of the Convention, the Committee recommends that licences should not be granted for the opening of broadcasting stations by racist groups and that there should also be close monitoring and prevention of the broadcasting of racist messages by any broadcasting station."

64. The CHAIRMAN said that he would not, as Country Rapporteur, be in favour of expanding the text in the manner proposed by Mr. Yutzis. If there were to be any addition, he would prefer to add the words "and prosecutions instituted" after "then the licences should be withdrawn". That would amount to recommending stronger action after the infringement was recorded, rather than requiring the State to withhold licences from suspect groups.

65. Mr. van BOVEN said that, with regard to the action recommended, a distinction should be drawn between article 4 (a) which was the subject of paragraph 15, and article 4 (b). If the Committee were to advise the Government to refrain from issuing licences to certain organizations because they were deemed racist, there would be an implicit reference to article 4 (b) requiring the prohibition of such organizations. That raised the different and delicate issue of censorship. The need to strike an appropriate balance between freedom of expression and dissemination of racist ideas and incitement to racist acts should be taken into account.

66. Mr. WOLFRUM endorsed Mr. van Boven's views, adding that, under the Convention, if an organization was deemed racist, it should be dissolved and the question of licensing would not arise. Otherwise, a licence could not be withheld, since that would open the door to censorship. He would be in favour of strengthening the recommendation along the lines suggested by the Chairman.

67. Mr. YUTZIS stressed that the main subject of his concern, which was relevant to article 4 as a whole, was the reliable evidence of broadcasting activities by racist organizations in Denmark.

68. The CHAIRMAN reminded members that the representative of Denmark had indicated that it was possible for such organizations to be declared illegal. It was to be hoped that the Danish Government would take that step if circumstances so warranted.

69. Mr. de GOUTTES, supported by Mr. YUTZIS, suggested that, to meet the concerns that had been expressed in the debate, the paragraph might be worded in the following, more general terms: "The Committee recommends strict application of article 4 (a) and 4 (b) to neo-Nazi groups, particularly when they operate through radio or telephone messages".

70. Mr. CHIGOVERA said that the point raised by Mr. Yutzis concerned article 4 (b), whereas paragraphs 15 and 11, reflected the Committee's concern with article 4 (a).

71. The CHAIRMAN, following an observation by Mr. WOLFRUM, suggested the following wording: "The Committee recommends the reinforcement of measures for the full implementation of article 4 (a) and (b) of the Convention and calls attention to its general recommendation XV. If the allegations in paragraph 11 above are correct, then the licences should be withdrawn and prosecutions instituted to comply with article 4 of the Convention".

Paragraph 20

12. Mr. WOLFRUM proposed the addition, at the end of the paragraph, of the phrase "and to their compensation for relocation", for the sake of consistency with paragraph 13.

13. Mr. RECHETOV said that "indigenous peoples" should be replaced by "indigenous people".

14. The CHAIRMAN said he took it that the Committee wished to adopt the draft concluding observations concerning the tenth, eleventh and twelfth periodic reports of Denmark, subject to amendments proposed during the discussion and possible drafting and editorial changes.

15. It was so decided.

The meeting rose at 6 p.m.